

**(NOT APPROVED)**

**CITY OF SANTA MONICA**

**CITY COUNCIL MINUTES**

**FEBRURAY 21, 2019**

A special meeting of the Santa Monica City Council was called to order by Mayor Davis at 5:30 p.m., on Thursday, February 21, 2019, at City Council Chambers, 1685 Main Street.

Roll Call: Present: Mayor Gleam Davis  
Mayor Pro Tem Terry O'Day  
Councilmember Sue Himmelrich  
Councilmember Ana M. Jara  
Councilmember Kevin McKeown  
Councilmember Greg Morena  
Councilmember Ted Winterer

Also Present: City Manager Rick Cole  
City Attorney Lane Dilg  
City Clerk Denise Anderson-Warren

**CONVENE/PLEDGE**

On order of the Mayor, the City Council convened at 5:30 p.m., with all members present. Councilmember Winterer led the assemblage in the Pledge of Allegiance.

**CLOSED SESSIONS**

Members of the public Cris Mclead, Denise Barton, Linda Lancaster, Kevin Shenkman (time donated by Steve Lancaster), Joel Koury (time donated by Yolanda Lewis), Tricia Crane, Taffy Patton, Lucky Basseri, Janet McLaughlin, Armen Melkonians, Elaine Golden-Gealer, Stanley Epstein, Jerry Rubin, Maryanne LaGuardia, Zina Josephs, Robert Gomez, Maria Loya, Myla Reson, and Peter Borresen commented on closed sessions.

On order of the Mayor, the City Council recessed at 6:07 p.m., to consider closed sessions and returned at 7:04 p.m., with all members present, to report the following:

**1.A. Conference with Legal Counsel – Existing Litigation –  
Litigation has been initiated formally pursuant to Government Code  
Section 54956.9(d)(1): Pico Neighborhood Association and Maria Loya  
v. City of Santa Monica, Los Angeles Superior Court, Case No. BC  
616804**

The City Attorney reported the following:

This litigation began in April 2016, when the Pico Neighborhood Association, Advocates for Malibu Public Schools, and community member Maria Loya filed a complaint in the Los Angeles County Superior Court.

Advocates for Malibu Public Schools later withdrew from the lawsuit, and an amended complaint was filed in February 2017. The amended complaint challenged the legality of Santa Monica's at-large election system for the City Council, which was adopted by the voters in 1946 as part of the City Charter.

In the over two years since the lawsuit was filed, the parties have engaged in extensive briefing, pretrial proceedings, and a seven-week trial.

On February 15, 2019, the trial judge adopted the proposed judgment submitted by the plaintiffs and issued that as its final judgment. The judgment:

- (a) holds that Santa Monica's at-large elections for City Council seats violate the California Voting Rights Act and the Equal Protection Clause of the California Constitution;
- (b) enjoins the City of Santa Monica from holding future at-large elections for City Council seats;
- (c) orders that future elections for City Council seats be district-based, in accordance with a seven-district map drawn by the plaintiffs' expert and adopted by the court;
- (d) orders the City to hold an election on July 2, 2019, for all seven City Council seats using this seven-district map;
- (e) prohibits any person not elected in such a district election from sitting on the City Council after August 15, 2019; and
- (f) holds that plaintiffs are entitled to recover reasonable attorneys' fees and costs, to be paid by the City.

During the course of the litigation, the City has contested many of the legal and factual positions taken by the plaintiffs and ultimately adopted by the trial court. The City's objections are well documented in public filings available on the City's website. They include the following:

With respect to the California Voting Rights Act, the City has argued that the plaintiffs failed to prove that past elections demonstrate racially polarized voting in Santa Monica and failed to

prove that the City's at-large election system dilutes Latino voting power.

- At trial, the City presented evidence to demonstrate that between 2002 and 2016, candidates preferred by Latino voters won at least 70% of the time in Santa Monica City Council races and over 80% of the time in at-large elections that plaintiffs claimed involved “racially polarized” voting for the school district, community college, and rent control boards. Under the at-large system, Latinos, who make up 13.6% of Santa Monica voters, have held at least one out of seven (14%) of the City's Council seats since 2012 and at the time of trial held four out of 19 (21%) of the City's other at-large elected positions on the school district, community college, and rent control boards.
- The City also contended that plaintiffs failed to show that a move to districts would generate better outcomes for Santa Monica's Latino voters. At trial, the City demonstrated that it is impossible to draw a district in Santa Monica with a voting population that is more than 30 percent Latino and that no court adjudicating a vote-dilution claim has ever ordered the creation of districts where the citizen-voting-age population of the relevant minority group in the purported remedial district would be this low. In Santa Monica, approximately two-thirds of Latino voters live outside the proposed Pico district. In a seven-district system, most of these Latino voters would reside in districts with overwhelmingly white majorities and be prevented from organizing together across neighborhoods, as they can in the current at-large system. Further, plaintiffs did not dispute that district-based elections would dilute the voting strength of African-American and Asian-American voters in Santa Monica.
- With respect to the claim of intentional discrimination, the City presented evidence at trial to show that the transformation of the City's electoral system in 1946 benefited minority voters and garnered the vocal support of leaders of color within the community. The City also contends that claims of intentional discrimination with respect to the 1992 Charter Review Commission proceedings rest on a single statement by a single Councilmember that has been selected from lengthy recordings and significantly misinterpreted. The City also contends that the evidence failed to show that any alternative method of election would have enhanced Latino voting power at any time since 1946.

- Finally, the City has argued that the trial court's adoption of the seven-district map drawn by plaintiffs' expert disregards the democratic process required by California's Election Code for drawing district lines.

The trial court rejected these arguments by adopting (with a few minor changes) the proposed statement of decision and proposed judgment drafted by plaintiffs' counsel. As stated in prior filings, the City contends that in doing so the trial court left unresolved a number of significant legal issues and that its rulings on both the CVRA and Equal Protection claims cannot be supported by the facts.

Having reviewed the court's orders and consulted with outside counsel, and for the reasons set forth in closed session, the City Attorney's Office recommends filing an appeal in this case in order to seek appellate review of the many contested legal and factual issues that remain and that have never previously been addressed by the California Courts of Appeal.

The City Attorney further clarified that, as further stated in publicly filed papers, it is the City's position that the filing of an appeal should automatically stay (or hold in abeyance) the trial court's orders pending review by the court of appeal. Should an automatic stay not be entered, the City's attorneys would seek a discretionary stay in order to avoid the time, expense, and uncertainty of initiating a new district-based election process that might be halted mid-course by a decision from the court of appeal.

The City Attorney further clarified two issues that arose in public comment:

- First, the investment in this case has already been made developing the record at the pretrial and trial stage. By contrast, an appeal involves drafting legal briefs and a 30-minute oral argument.
- Second, were the City not to file an appeal in this action, the court's judgment would take effect in full, including the imposition of the seven-district map drawn and the order that the City pay the plaintiffs' attorneys fees.

Thus, to restate, having reviewed the court's orders and consulted with outside counsel, and for the reasons set forth in closed session, the City Attorney's Office now recommends that Council approve the filing of an appeal in this case.

Motion by Councilmember McKeown, seconded by Mayor Pro Tem O'Day, to filing an appeal in this case. The motion was approved by the following vote:

AYES: Councilmembers Morena, Himmelrich, McKeown, Winterer,  
Jara, Mayor Pro Tem O'Day, Mayor Davis  
NOES: None  
ABSENT: None

**ADJOURNMENT**

On order of the Mayor, the City Council meeting adjourned at 7:13 p.m.

ATTEST:

APPROVED:

Denise Anderson-Warren  
City Clerk

Gleam Davis  
Mayor